

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO. 4:04-CR-56-1H

UNITED STATES OF AMERICA

v.

SCOTTIE L. WHITAKER,

)
)
)
)
)
)
)

ORDER

This matter is before the court on defendant's motion to vacate his conviction, relying on United States v. Simmons, 649 F.3d 237 (4th Cir. 2011). By order filed July 31, 2012, the court ordered defendant to show cause, if any, why his motion should not be construed as a motion to vacate pursuant to § 2255 and dismissed as successive. Although defendant has filed numerous documents since that time which attempt to convince the court to review the matter, a review of those filings reveal that defendant has not shown good cause as to why his motion should not be construed as a motion pursuant to § 2255. Therefore, this motion to vacate is construed as a motion filed pursuant to 28 U.S.C. § 2255.

28 U.S.C. § 2244 (3)(A) provides that before a second or successive habeas corpus application may be filed in the

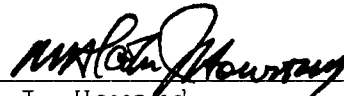
district court, the applicant must move the appropriate court of appeals for an order authorizing the district court to consider the application.

The petitioner has filed a previous 28 U.S.C. § 2255 claim; therefore this court is without jurisdiction to review the matter until authorized to do so by the United States Court of Appeals for the Fourth Circuit. Accordingly this matter is DISMISSED without prejudice for the petitioner to seek authorization to file this application in the Eastern District of North Carolina.

A certificate of appealability shall not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that an assessment of the constitutional claims is debatable and that any dispositive procedural ruling dismissing such claims is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683-84 (4th Cir. 2001). A reasonable jurist would not find this Court's dismissal of Petitioner's § 2255 Motion debatable. Therefore, a Certificate of Appealability is DENIED.

The clerk is directed to terminate all other pending motions as moot.

This 16th day of October 2013.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
#26